



8-16-04

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PATENT  
10/669,108

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: DAUGHERTY, Roger ) Docket No: 21590-CIP  
Serial No.: 10/669,108 ) Examiner: Patel, Nihir B.  
Filed: September 23, 2003 ) Group Art: 3743

For: **APPARATUS AND METHOD FOR HUMIDIFICATION OF INSPIRED GASES**

**RESPONSE TO RESTRICTION REQUIREMENT**

August 13, 2004

MS: Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Dear Sir:

Responsive to the Restriction Requirement mailed July 13, 2004, in the above-styled patent application, please amend the application as indicated and consider the appended remarks.

**CERTIFICATE OF EXPRESS MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service Express Mail with sufficient postage in an envelope addressed to: MS: Amendment, Commissioner For Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on:

8-13-04  
(Date)  
Cynthia Pilato  
(Name of Person Mailing)  
Cynthia Pilato  
(Signature of Person Mailing)  
8-13-04  
(Date)

## **RESTRICTION ELECTION WITH TRAVERSE**

Pursuant to Examiner's restriction requirement, Applicant elects **Species II: Figure 4, with traverse**, and hereby assert that Claims 1-4 are all readable thereon.

However, Applicant respectfully asserts that Examiner has not provided reasons and/or examples to support Examiner's conclusions. MPEP § 803. Additionally, Examiner has not shown, via appropriate explanation of separate classification, or separate status in the art, or a different field of search, that a serious burden will be imposed upon Examiner during examination of Applicant's invention. *Id.* Instead, Examiner has merely imposed an election/restriction requirement upon Applicant - without any explanation or showing of cause – and has advised Applicant that an election may be made with traverse. However, Applicant cannot make a proper election without fully understanding Examiner's reasons in support of Examiner's conclusion, and as such, cannot articulate a rational or cogent argument in support of Applicant's traversal to same.

Furthermore, in the absence of Examiner citing relevant classification and sub-classifications for the species cited in the Election/Restriction Requirement, Applicant cannot ascertain the nature of the variants/species in view of the art, nor can Applicant ascertain whether it would place undue burden upon Examiner in the examination of Applicant's invention as a whole.

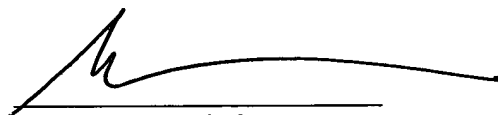
Nonetheless, Applicant respectfully asserts that all Independent Claims 1-4 are generic enough to encompass all disclosed and claimed embodiments of Applicant's invention.

Accordingly, Applicant respectfully requests that Examiner withdraw the election/restriction requirement in view of the foregoing arguments.

### CONCLUSION

The above election is to form and thus, no new matter was added. Applicant hereby expressly reserves its right to seek protection of all non-elected species in related divisional applications. Should there be any questions or concerns, Examiner is invited to telephone Applicant's undersigned attorney.

Respectfully submitted this 13<sup>th</sup> day of August, 2004.

  
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